

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NICHOLAS L. KOLAKOVITCH,

CV-05-6218-AS

Plaintiff,

ORDER

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

---

REDDEN, Judge.

On August 4, 2006, Magistrate Judge Ashmanskas issued a Findings and Recommendation (#15) that the final decision of the Commissioner denying plaintiff's claim for disability insurance benefits and supplemental security income benefits should be affirmed and judgment should be entered dismissing this case. Petitioner has filed timely objections (#17) and this matter is now before the court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations" made by a Magistrate Judge. 28 U.S.C. § 636(b)(1). Within ten days

of being served with a copy of the Findings and Recommendation, any party may file written objections and the court shall make a *de novo* determination of those portions of the Findings and Recommendation to which objections are made. 28 U.S.C.

§ 636(b)(1). When a party objects to any portion of the Magistrate's Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

I have reviewed the record *de novo*, considered plaintiff's objections, and find the record as a whole supports the Magistrate Judge's Findings. The ALJ adequately evaluated the medical opinions of Dr. Tavakoli and Dr. Kirkendall and gave sufficient reasons for rejecting some aspects of their respective opinions. In addition, the ALJ's hypothetical to the vocational expert adequately accounted for functional limitations described in Dr. Kirkendall's opinion. Finally, I agree with the Magistrate Judge's conclusion that the ALJ appropriately evaluated the lay witness testimony of Douglas Crince and Jim Fletcher.

For these reasons, I adopt the Magistrate Judge's Findings and Recommendation (#15) in their entirety and DISMISS this case with prejudice.

IT IS SO ORDERED.

DATED this 15th day of November, 2006.

/s/ James A. Redden  
James A. Redden  
United States District Judge